

DRUGGED DRIVING CONFERENCE

February 1 – 4, 2021
Phoenix, Arizona



Cross-Examination of Defendants and Defendant's Doctors

Presented by:

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Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
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ELIZABETH BURTON ORTIZ
EXECUTIVE DIRECTOR

Dr. XYZ Interview Questions

Qualifications/Employment¹:

- When did you become a doctor?
- Have you been working in that capacity since that time? Any plans to retire?
- Where did you attend college for your undergraduate degree? What did you study? Where did you attend medical school?
- Are you currently licensed²? When did you become licensed in Arizona? Has that license ever been suspended? Lapsed for any reason? Have you been licensed anywhere else? Have you ever had any disciplinary matters with the licensing board?
- Have you ever been arrested, charged with a crime or convicted of a crime? If so, when? Where? What for?
- Are you board certified in any areas?
- What is your current area of practice? Have you practiced in any other areas?
- Have you participated in any scientific studies? If so, which ones? Were they peer-reviewed? Published?
- Published any papers? Written any articles? If so what? Where?
- Have you worked in any labs? Doing what?
- Have you ever had a patient be dishonest with you?
- Have you ever prescribed drugs to a patient and later learned the patient was abusing them?
- Have you ever testified in court before? In what capacity? How many times? Defendants? Plaintiffs?
- Are you being paid or compensated for your participation in this case?

Drug Effects in General

- What education and experience do you have with pharmacology? Toxicology?
- What is Prozac? That's a brand name right? What is it chemically? Generic name?
 - How does Prozac effect the body? Specifically the brain? You're board certified in neurology, right? Does it cause Horizontal Gaze Nystagmus? What is HGN?
 - How does the body metabolize prozac?
 - What chemicals does it metabolize into? For example the active chemical in Marijuana that gets you high is tetra hydra cannabinol once metabolized in the body it becomes thc, hydroxy tetra hyda cannabinol and carboxy tetra hydra cannabinol. What does Prozac do?
 - What are the "hazards and side effects" of this drug?
- What is Xanax? Brand name, right? What is it chemically? Generic name?

¹ You can find a lot of the answers to this section via a quick Google search ahead of time. Is what they are saying the same? Similar? Exaggerated?

² For Arizona physicians, you can look them up at the following link to review any licensing issues/discipline, etc. : <https://azbomprod.azmd.gov/GLSuiteWeb/Clients/AZBOM/public/WebVerificationSearch.aspx?q=azmd&t=20210121070318>

- How does Xanax effect the body? Specifically the brain? Again, you're board certified in neurology right? Does it cause Horizontal Gaze Nystagmus?
 - How does the body metabolize Xanax?
 - What chemicals does it metabolize into?
 - What are the "hazards and side effects" of this drug?
- What is prosom? Brand name, right? What is it chemically? Generic name?
 - How does Prosom effect the body? Specifically the brain? Again, you're board certified in neurology right? Does it cause Horizontal Gaze Nystagmus?
 - How does the body metabolize Prosom?
 - What chemicals does it metabolize into?
 - What are the "hazards and side effects" of this drug?
- What education and experience do you have with polydrug use?
 - What do you know about drug interactions?
 - It's possible for multiple drugs being taken at once to compound each others effects right?
 - It's possible for multiple drugs being taken at once to cancel each other out so to speak as well right?
 - How do these three drugs – Prozac, Xanax, Prosom interact?
- Are you familiar with the studies that show central nervous system depressants cause horizontal gaze nystagmus?
 - Penttila, Lehti & Lonnqvist, Nystagmus and Disturbances in Psychomotor Functions Induced by Psychotropic Drug Therapy, 1974 PSYCHIAT. FENN. 315 (abstract available on DIALOG, file 173: Embase 1975-79) (psychotropic drugs induce nystagmus).
 - Are you familiar with any of the NHTSA (National Highway Traffic Safety Administration) sponsored studies showing the effect of prescription drugs on people? Or any of the studies they've sponsored regarding the specific effect of benzodiazepines on people? If so, which ones?
 - Is Prozac a central nervous system depressant?
 - Is Xanax a central nervous system depressant?
 - Is Prosom a central nervous system depressant?
- In your letter you mention hazards and side effects involved with these drugs – what hazards and side effects are associated with Prozac? Xanax? Prosom?
- If a person is taking all of these drugs as prescribed – what metabolites should we expect to see in a sample of their blood? In what range of nanograms per milliliter?
- If a person is taking one of these drugs as prescribed – what metabolites should we expect to see in a sample of their blood? In what range of nanograms per milliliter?
- Do you agree that these drugs are capable of being abused?
- Do you agree that these drugs can affect a person's gross motor skills?
- Do you agree that these drugs can affect a person's ability to do divided attention tasks?
- Do you agree that someone operating heavy machinery should be cautious about taking these drugs? Why?
- Do people build up a tolerance to these drugs? How so?
- Are any of these drugs used to treat blood pressure? Seizures?

- Can any these drugs effect someone's speech? Make it slower³?
- Can any of these drugs cause someone to have a slower response time?
- Can any of these drugs effect someone's internal clock – in other words effect their perception of the passage of time?
- Can any of these drugs cause dizziness?

Treating Mr. ABC (Defendant)

- How long have you been treating Mr. ABC?
- How many times have you seen him?
- How long are your appointments with him when you see him?
- When did you first prescribe him drugs? Do you have a copy of all the prescriptions you have provided to him?
- What did you prescribe? In what amount? How was he instructed to take these drugs? When did/does the prescription expire?
- Did you do any bloodwork of Mr. ABC prior to that first prescription?
- Did you do any physical tests on Mr. ABC prior to prescribing him drugs?
- Did you do any assessments of his driving abilities prior to prescribing him drugs?
- Did you gather any baseline data of Mr. ABC prior to prescribing him drugs?
- Did you get a medical history of Mr. ABC before you prescribed him drugs? How did you get that? Was it based on his reporting to you what the medical history was?
- Did you review past medical records of Mr. ABC prior to prescribing him drugs? Speak with any of his prior treating physicians? Who? When?
- Was he seeing any other doctors at the time you started prescribing him drugs? Is he seeing any other doctors now?
- When you prescribed these drugs – did you review a prescription profile of Mr. ABC to determine if any other doctors had prescribed him drugs?
- When you prescribed these drugs – what hazards and side effects did you warn Mr. ABC about? How many times? Do you have any literature or pamphlets outlining the possible hazards/side effects of these drugs? Please provide.
- The drugs that you prescribed, how are they administered? Pills that are swallowed?
- Does he take these pills in your presence? Do you check his mouth after to confirm they were indeed swallowed?
- Have you done any blood tests after prescribing the medication to confirm he is taking them as prescribed?
- Have you done any assessments of Mr. ABC's ability to drive after being prescribed these medications?
- You said in your letter that he takes Xanax during the day – is this claim based on anything other than what Mr. ABC has told you?
- You said in your letter that he takes Prosom at night – is this claim based on anything other than what Mr. ABC has told you?

³ The next few questions can be tailored to the specific observations by the officer in your case

- You said in your letter that Mr. ABC does not mix up his medications – is this based on anything other than what Mr. ABC has told you?
- Would you have any hesitation getting into a car with Mr. ABC behind the wheel knowing he is taking these drugs?
- You said in your letter that Mr. ABC reports being alert and OK to drive in the daytime – have you ever observed him driving? If so, when, where under what conditions? What does he report about his ability to drive at night? What does he report about his alertness at night?
- Has Mr. ABC discussed this case with you? What has he told you about what happened on DATE OF VIOLATION?
- What facts did you base the opinions in your letter on?
- Did you review anything in preparation for this interview? If so, what?
- Were you aware of what the Mesa Crime Lab determined was in his blood? At what levels?

Training and Experience in Impaired Driving

- What education, training and experience do you have in impaired driving?
- How would you define impaired to drive?
- What does it mean if someone is impaired to drive?
- Are you familiar with any of the peer-reviewed scientific studies regarding the ability of prescription drugs to impair ones ability to drive?
- Are you aware that peer-reviewed scientific studies regarding the ability of prescription drugs to impair ones ability to drive even exist?
- Are you familiar with the nationally recognized Drug Recognition Expert (DRE) Program? And the science it's based on?
- Are you familiar with standardized field sobriety tests?
- Are you familiar with the scientific studies supporting the use of field sobriety tests in impaired driving investigations?

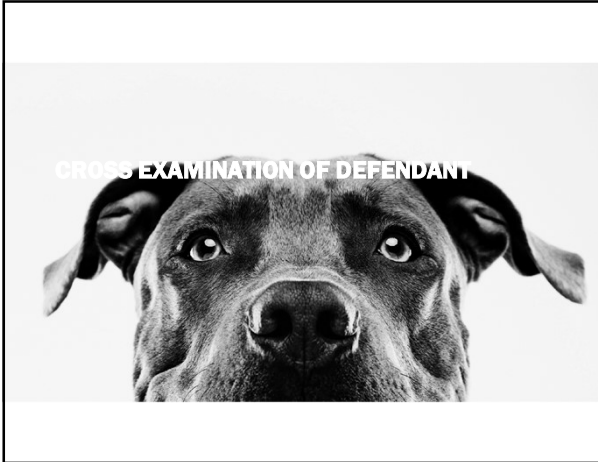
The letter he wrote

- I've been talking about this letter you wrote - Perhaps I should have asked this earlier - You wrote this, correct? These are your words?
 - It says you were asked to write it? Who asked you to write it? What were you asked to include?
 - Do you think it's an accurate statement?
 - Would you change anything about it now?
 - Do you feel you are qualified to proffer these legal opinions? Why?
 - Do you feel that someone else would be more qualified to opine on Mr. ABC's ability to drive?
 - Do you agree that someone making observations of Mr. ABC at or immediately after the time of the collision would be more qualified to assess his ability to drive?
 - Are you willing to testify in court with certainty that Mr. ABC is taking the drugs you prescribed him "as prescribed"?

Example of Interview for D's Doc in Rx DUI Case

Lauren Ramirez


- Are you willing to testify in court that it's your expert opinion that these drugs did not impair Mr. ABC's ability to drive on DATE OF VIOLATION?



1



2



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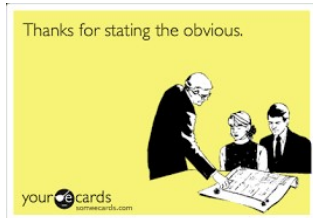
STEP ONE: GAINING CONCESSIONS



4

BASIC ELEMENTS WE CAN AGREE ON:

- ☐ Date
- ☐ Time
- ☐ Location
- ☐ Jurisdiction
- ☐ ID



5

WHY IS IT A WIN?

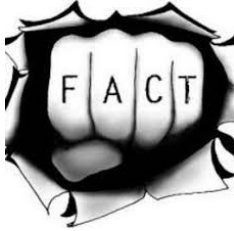


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EASY VISUAL AID:

- Put your copy of the jury instruction book on the overhead projector or ELMO
- Check off the elements as Defendant concedes
- Circle the only element at issue

7

MAKE DEFENDANT CONCEDE FACTS FROM OUR STORY THAT DEFENDANT DID NOT CONTEST DURING HIS VERSION

8

Sign Post- Sir, I'm going to ask you some questions, which if you are truthful, will likely result in us being in agreement. Is it okay if I ask you those questions?

Sir, You agree that you did the field sobriety tests?
And you were here when the video was played in the court?
And agree that you wobbled? You needed the instruction repeated? And you admitted to drinking?

Topics: Driving, weather, road conditions, where they were coming from, where they were going, that their blood was actually drawn, The list goes on.

These Should be YES or NO questions.

9



Rein Defendant inf Be in control. Keep answer yes or no. Not their chance to explain.

10

STEP 2: IMPEACH




11

IMPEACHING DEFENDANT

- Impeach Defendant with multiple inconsistent stories
- Impeach Defendant with ability to recall - admitted drinking at least one beer?
- Impeaching with bias.
- Impeach with criminal convictions.
- Impeach with lack of corroboration*
- Impeach with social media posts*




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LEVEL 3: LOCK IN A STORY

- You already have a great idea of defendant's story
 - Defendant's Statements at Court
 - Opposing Counsel's Statements at Court
 - Deviation letter
 - Defendant's admissions in police report
- You just heard version 2.0 of his story

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**IF THEY
DIFFER, OR
YOU CAN
DISPROVE IT...**

LOCK IT IN!

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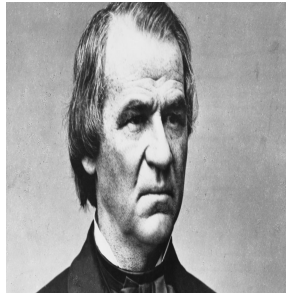
TIPS

- Remember to listen
- Bullet points
- Time is precious – only juicy statements get quotes
- “Judge may I have a minute”- organize

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Impeach him

- Show the two versions
- Drawing columns helps
- Bring up all the evidence that supports your TRUE version- testimony and physical
- Ask what evidence he has to support this LIE



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SHOW THEY DON'T KNOW THE SCIENCE

- What were your baseline blood levels?
- What were your levels when your doctor renewed the prescription?
- Do you agree the principal that people that are HIGH are poor predictors of themselves being high?
- You dispute the studies, do you? You don't dispute the lab results? (CHECK OFF THE .08+ on the ELMO)

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STEP 3: DEVELOP YOUR STYLE

- Keep the big picture in mind.
- Think about winning the war not just the battle.

18

CONTROL TECHNIQUES

No, I'm not a control freak.. I just like certain things a certain way.

someecards
user card



19

CONTROL TECHNIQUES

- Repeat your question
- "Is that a yes?"
- "Mr. Waters, did you understand my question?"
- "Sir, you seemed to hear Mr. Defense Attorney's questions, are you having trouble hearing mine?"
- Perhaps you didn't hear my question so let me ask it again...

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DEFENSE

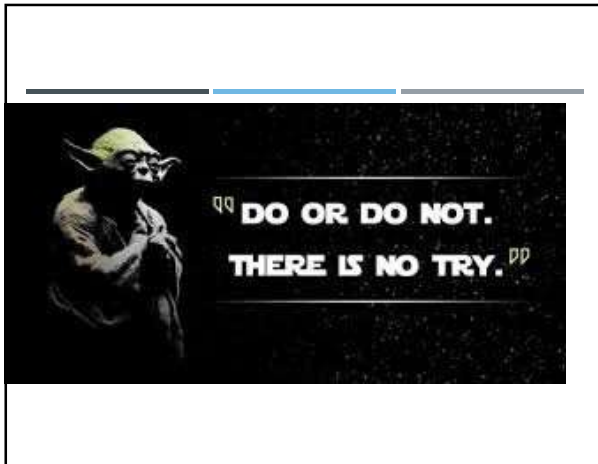
HAVE A FEW PHRASES
TO HELP YOU ESCAPE



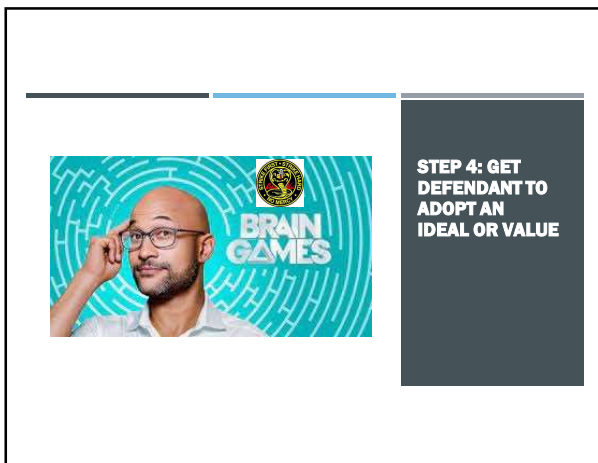
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23



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THINK OF QUESTIONS WHERE BOTH ANSWERS HELP YOUR CASE.

- Sir, do you agree that driving after smoking marijuana is dangerous?
- You do? Why? Tell me more. So you don't dispute (Let them talk!!! Let there be an awkward pause ... they will keep talking) redirect if necessary
- You don't?

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DOCTORS


26

TO DO:

- Interview them
- Don't pay them
- Ask for a CV
- Subpoena duces tecum
- In person if possible
- Ask their expert opinion first-
- Then ask how they reached that opinion

27

DON'T

- Be a jerk
- Be intimidated
- Give away your case theory
- ...



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Dr. [REDACTED] is fearful of doing a telephonic interview. He says he suffers from performance anxiety and will likely stammer. He would like to know if you would be willing to provide him with a written list of questions so that he can answer those questions in a written report.

Thanks,

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CONTACT INFO

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